

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the City of Bayport
Building Permit for Project 939 Inspiration
Parkway North, Bayport, Minnesota 55082

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

This matter was heard on October 16, 2013, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. The record was left open for the City to submit copies of the three photographs that the City building official showed to the builder on May 15, 2012.¹ The record closed on October 21, 2013.

Andrew Pratt appeared on behalf of the City of Bayport (City). Julia E. Anderson, Assistant Attorney General, appeared on behalf of the State Appeals Board (Board). Christopher Koss (Koss) appeared on his own behalf.

STATEMENT OF THE ISSUES

Does the City building official retain authority to request an engineering design after the State Appeals Board has determined that the construction meets code?

SUMMARY OF RECOMMENDATIONS

The Board's determination supersedes the authority of the local building official to require an engineered design. However, the Board should specify with particularity what the City building official is required to do upon final inspection of the ledger board attachment, and that he then be directed to approve the project if the contractor has done what the Board directed the contractor to do. In the alternative, the Board may consider other options such as approving code compliance now that the GRK screws have been installed. There needs to be additional specificity in the Board order.

Upon the evidence presented and the arguments of the parties, the Administrative Law Judge makes the following:

¹ Two photos and an engineering drawing were submitted on October 21, 2013, but the engineering drawing appears not to be part of what was required to be submitted. The photos that were sent are already in evidence as pages 20 and 21 of Exhibit 300. On October 21, 2013, Koss responded to the Buckley submissions. That response has been marked as Exhibit 400 and is received already in evidence as pages 20 and 21 of Exhibit 300. On October 21, 2013, Koss responded to the Buckley submissions. That response has been marked as Exhibit 400 and is received.

FINDINGS OF FACT

1. Christopher Koss (Koss) is a self-employed building contractor.²
2. John Buckley (Buckley) is a Certified Licensed Building Official in Minnesota and is employed by the City of Bayport (City) as its building official. Part of his duties include issuing building permits, conducting inspections and approving completed projects.³
3. In 2012, Koss was retained by the homeowner at 939 Inspiration Parkway North, Bayport, Minnesota 55082 (the Property), to build an exterior deck onto an upper level of the house.
4. On May 15, 2012, Koss met with Buckley to obtain a building permit for the deck.⁴ Koss presented Buckley with three pages of mechanical drawings of the proposed deck, and Buckley did some handwriting on the drawings of conditions that Buckley required. Buckley made notations on the drawings. The notations that have been disputed are the following:
 - A. Max cantilever is 12" to 18" per Mn code. (Koss was proposing 24").
 - B. (Joist spacing) 2" x 10" 12" o.c. (on center) required. (Koss was proposing 16" spacing).
 - C. Ledger board must be attached to existing floor per Minnesota code.⁵
5. Buckley required Koss to space the joists 12" on center rather than 16" on center as is commonly required by code because Buckley heard from someone, possibly a neighbor that the homeowner intended to place a hot tub on the deck. Koss disputed that requirement, but relented. The homeowner denies intent to place a hot tub on the deck.⁶
6. It is only the last requirement relating to ledger board attachment that is in issue on this appeal.
7. Buckley and Koss dispute whether there was an agreement on May 15 about the method of ledger board attachment. Buckley claims that he showed Koss three photographs of kinds of attachments that Buckley felt would meet code.⁷ These were just three of the possible methods that Buckley thought would meet code, based

² Testimony of Christopher Koss.

³ Test. of John Buckley.

⁴ Test. of J. Buckley and C. Koss.

⁵ Exhibit A. The ledger board is a horizontal board that attaches the deck floor to the house rim.

⁶ Test. of C. Koss and Ex. L.

⁷ Ex. 300, pp. 19 - 21. The undersigned Administrative Law Judge has numbered the pages of Exhibit 300 from 1 to 63, for ease of reference.

on prior conversations Buckley had with other state building officials.⁸ The attachment examples that Buckley showed to Koss were not engineered.⁹

8. Koss agrees that Buckley showed him at least one photo, but understood that it was only a suggestion of a possible attachment that could be made. Koss did not think he had to make the attachment in any particular way as long as he met code.¹⁰

9. On May 22, 2012, Buckley issued a building permit to Koss for the project.¹¹

10. Koss built the deck incorporating the two changes that Buckley specifically noted on the drawing. Koss built the deck with joists 12" on center, and with a shorter cantilever than Koss had originally proposed.¹²

11. However, Koss attached the ledger board using a system that was specified by Weyerhaeuser, the manufacturer of the engineered deck floor system, to meet the requirements of the 2009 and 2012 International Residential Code (IRC).¹³ Koss used LedgerLOKs to attach each joist, plus one wood block on one side of each joist. Koss fastened the blocks with deck screws. Buckley wanted two wood blocks, one on each side of the joists, fastened with through bolts.¹⁴

12. On May 29, 2012, Buckley went to the property to do a final inspection.¹⁵ Buckley refused to approve the attachment of the deck to the house, because he was not familiar with the attachment method used. The method used was not any of the alternatives that Buckley showed to Koss on May 12. Buckley contended that the method of attachment was not conventional and impacted performance-based life safety issues. Buckley did not feel confident that he could determine if the attachment met code, so he requested Koss to get an engineering opinion. Koss refused, claiming that the code requirements are minimum requirements, that he has complied with the recommendations of Weyerhaeuser in their product sheet, and that he has complied with common building practice. Koss has had this kind of installation approved in at least three other jurisdictions: St. Paul, Woodbury and Circle Pines.¹⁶ Koss also contends that the system he used is stronger than what the current code requires.¹⁷

⁸ Test. of J. Buckley and Ex. 300, pp. 19-21.

⁹ Ex. 300, p. 59.

¹⁰ Test. of C. Koss.

¹¹ Test. of J. Buckley.

¹² Test. of C. Koss.

¹³ Ex. F.

¹⁴ Test. of C. Koss, J. Buckley, and Ex. D. The testimony before the Board was that the screws appeared to be sheetrock screws. However, upon further inspection, when Koss was installing the GRK screws, it appears the screws were deck screws.

¹⁵ Ex. 203.

¹⁶ Test. of C. Koss.

¹⁷ *Id.*

13. On May 31, 2012, Buckley emailed Koss requiring Koss to have a structural engineer design the attachment.¹⁸

14. On September 18, 2012, Koss appealed Buckley's denial. That appeal goes to the State Appeals Board (Board). The stated basis for the appeal was that the true intent of this code or the rules have been incorrectly interpreted, and an equally good or better form of construction is being proposed (of course, in this case the construction was already done).¹⁹

15. The Board heard the appeal on January 23, 2013. The five members of the Board were:

- A. A building official from the city of Eagan.
- B. A building official from the city of Arden Hills,
- C. A building official from the city of Victoria.
- D. A professional engineer.
- E. A building contractor.²⁰

16. After hearing from both parties, and having their prehearing submissions, the Board approved the following motion on January 23, 2013:

The deck meets the code for positive connection except for lateral force transfer at the blocking. Christopher Koss will need to provide lateral force transfer between the blocking and the web. Christopher Koss needs to provide John Buckley with the connection device(s) and number he is proposing to John Buckley for his approval. Once approved, move forward with the fix and get the final inspection approved by Buckley.²¹

The motion passed with unanimous approval.²²

17. On January 28, 2013, the Chair of the Board sent a letter stating:

The Board has approved your (Koss's) appeal in the matter of an exterior deck connection to an engineered floor system with conditions of providing the Building Official with appropriate connection devices(s) and number of for his approval to be installed to provide lateral force transfer between the blocking and the web of the engineered joist and then moving forward with the fix and getting a final inspection passed by the Building Official, John Buckley.²³

¹⁸ Ex. M.

¹⁹ Ex.300, pp. 3 and 4.

²⁰ *Id.*, p.57.

²¹ Ex. 300, p.62.

²² *Id.*, p.63.

²³ Notice and Order for Prehearing Conference.

18. The “connection devices” referenced were to be three GRK screws inserted into the single blockings already in place. Koss and Buckley both stated to the Board that would be satisfactory.²⁴

19. After the Board voted, and the meeting ended, Buckley decided that he could not approve the screw attachments unless the Board specified the length, diameter and placement of the screws to be used.²⁵ Thus, when Koss advised Buckley by email of the screws Koss intended to use, Buckley did not agree, but rather responded that Buckley would be consulting with the City Attorney.²⁶ Buckley never did approve the GRK screws.

20. Koss proceeded to install three two inch long GRK screws into each block. The blocks are approximately one-half inch thick.²⁷ When Koss was at the site, he observed that the screws that had been used were deck screws, not sheetrock screws as had been previously thought to be true.²⁸

21. On May 16, 2013, the City appealed the Board decision.²⁹

22. On July 26, 2013, the Commissioner of the Department of Labor and Industry initiated this hearing by referring the matter to the Office of Administrative Hearings for a recommendation.³⁰

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of the Department of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 326B.139 and 14.50.

2. The Department of Labor and Industry gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

²⁴ Ex. 300, p. 62.

²⁵ Test. of J. Buckley.

²⁶ Ex. R. The screws that Koss proposed to use were 2” RSS screws which are rated for 754 pounds of shear strength. Koss proposed putting two screws into each block, but instead he put in three.

²⁷ Test. of C. Koss, and Ex. P.

²⁸ Test. of C. Koss.

²⁹ Ex. 300, pp. 55-56.

³⁰ Notice and Order of the Commissioner.

4. The State Building Code governs the construction of buildings to which the Code is applicable.³¹

5. The Code governs the deck constructed in this case.³²

6. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.³³

7. The Minnesota Building Code adopts the 2006 International Residential Code (IRC).³⁴

8. Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable.³⁵

9. Buildings and structures and all parts thereof shall be constructed to safely support all loads, including dead loads and live loads as prescribed by the IRC. The construction shall result in a system that provides a complete load path. Buildings and structures that are constructed as prescribed by the IRC are deemed to be in compliance.³⁶

10. A building official is responsible to approve building compliance with the State Building Code and may request an engineering evaluation or tests when needed to assure Code compliance.³⁷

11. The state building official is under the direction and supervision of the Commissioner of the Department of Labor and Industry.³⁸

12. The Minnesota Rules create a Board of Appeals with authority to review decisions of local building officials relative to the application and interpretation of the Building Code. The Board consists of members who are qualified by experience and training in matters pertaining to building construction. The appeal issues allowed are that the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed.³⁹

13. In this case Buckley decided/ordered that Koss needed to obtain a professional engineering opinion. Koss appealed that decision to the Board, and the

³¹ Minn. Stat. § 326B.101.

³² Not a contested issue.

³³ Minn. Stat. § 326B.101.

³⁴ Minn. R. 1309.0010, subp.1.

³⁵ IRC § R. 502.2.2.

³⁶ IRC § R. 301.1.

³⁷ Minn. R. 1300.0010, subp. 15.

³⁸ Minn. Stat. § 326B.127, subd. 1, and Minn. R. 1300.0070, subp. 24.

³⁹ Minn. R. 1300.0230.

Board essentially decided that a professional engineering opinion was unnecessary, but that installation of GRK screws in the blocking would satisfy the lateral force transfer requirements of code.⁴⁰

14. The Board decision required Buckley to then inspect to determine if Koss had complied with the Board directive. The Board directive could be more precise and clear. If the Board's directive was simply to require Buckley to determine if three GRK screws were placed, then the Board should clearly state that. If the Board needs to approve the length and diameter of the GRK screws, then they should do that. Or, if the Board now feels that the installation meets code because the screws have been installed, then that could be the most efficient resolution of the issue before the Board. The resolution of these or other options may require the Board to reconvene the hearing.

15. This matter should be remanded to the Board to consider the alternatives suggested above, or such further proceedings as may be reasonably required.

16. The attached memorandum is incorporated herein by this reference.

Based on the foregoing Conclusions of law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the State Appeals Board's determination supersedes the authority of the local building official to require an engineered design. However, the Appeals Board should specify with particularity what the City building official is required to do upon final inspection of the ledger board attachment, and that he then be directed to approve the project if the contractor has done what the Board directed the contractor to do. In the alternative, the Board may consider other options, such as approving code compliance now that the three GRK screws have been installed. There needs to be some additional specificity in the Board order.

Dated: November 22, 2013

s/Thomas W. Wexler

THOMAS W. WEXLER
Administrative Law Judge

⁴⁰ Ex. 300, pp. 57-63.

NOTICE

The Commissioner of Labor and Industry has ordered pursuant to Minn. Stat. § 14.57 (2012) that the Report of the Administrative Law Judge shall constitute the final decision in this case.⁴¹ Accordingly, this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Minnesota Rules part 1309.0010 adopts the 2006 edition of the International Residential Code (IRC).

Minnesota Rules part 1300.0230, subpart 1, creates a local board of appeals to decide appeals of orders, decisions, or determinations made by a local building official relative to the application and interpretation of the applicable building code.

The city of Bayport has not created a board of appeals. For jurisdictions without a board of appeals Minn. R. 1300.0230, subp. 1, provides that the appellant may appeal to an appeals board assembled by the state of Minnesota, Department of Labor and Industry's Construction Codes and Licensing Division.

Minnesota Rules part 1309.0230, subpart 3, provides:

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

The State Board of Appeals is composed of persons who are qualified by experience and training to pass on matters pertaining to building construction. In this case the board was composed of three building officials from three different Minnesota cities, a professional engineer and a building contractor.

The state board is authorized to determine whether Buckley has incorrectly interpreted the applicable code provisions. That is essentially what the Board has done. The Board has determined that the deck blocking attachment meets code if three GRK screws are installed. If the GRK screws had been installed before the Board hearing, presumably the Board would have simply decided that the installation meets code and directed Buckley to approve the installation.

⁴¹ See Notice and Order for Prehearing Conference at page 2. All citations to Minnesota Statutes are to the 2012 edition; all citations to Minnesota Rules are to the 2013 edition.

When Buckley first met with Koss, Buckley had a preconceived idea that three different deck attachment options would satisfy him as meeting code. He admitted to the Appeals Board that none of the three options had been engineer-approved.⁴² These were options that Buckley had discussed with persons whose opinions he respected. There is no reason to expect that the opinions of these other sources are as reliable as the collective judgment of the Appeals Board, particularly where the Board had before it the specifics of the installation here involved.

The issue of what is a satisfactory attachment in this case looks like a matter well within the competence of persons experienced with this type of construction. It does not seem to require scientific engineering evaluation. In any event, the Board has the authority to determine the issue and has the advantage of a collective decision-making process, which has resulted in a unanimous Board consensus.

The board reasonably concluded that the installation meets the code requirement with the addition of three GRK screws. Buckley agreed before the Board that if the Board was satisfied with the installation, with the added fasteners, then he is too.⁴³ However, Buckley failed to engage in the attachment device approval procedure required by the Board directive. The Board unanimously decided as follows:

The deck meets code except for lateral force transfer at the blocking. Christopher Koss will need to provide lateral force transfer between the blocking and the web. Christopher Koss needs to provide John Buckley with the connection device(s) and number he is proposing to John Buckley for his approval. Once approved, move forward with the fix and get the final inspection approved by John Buckley.⁴⁴

Deciding what size screws are appropriate to securely fasten two boards together sounds like something a building official should be competent to do. Contrast the drawings that Buckley showed to Koss when they first met, which did not contain any notations of the size or precise placement of the bolts to be used.

Buckley contends that he is empowered to require an engineering opinion when he cannot determine if construction meets code. However, the Board of Appeals has now reached a different determination. The Board did not feel that an engineering opinion was necessary to conclude that the installation meets code. The decision of the Board should be entitled to deference from a hearing officer who is not as experienced in building code interpretation or commonly accepted construction techniques. Here it appears that the Board has acted well within its discretion and powers.

The problem with the Board's decision is that it directs Buckley to do something that Buckley claims he does not have the expertise to do and that the Board did not provide enough specific directives. The reasonable interpretation of the Board's

⁴² Ex. 300, p.59.

⁴³ Ex. 300, pp. 61- 62.

⁴⁴ *Id.*, p. 62.

decision is that Buckley should merely determine if the three GRK screws were installed in each block.⁴⁵ Or, in the alternative, now that the screws have been installed, it may be simpler for the Board to find that the construction meets code and order Buckley to approve the project unless Buckley can prove that there is something defective with the installation of the GRK screws.

T. W. W.

⁴⁵ If Buckley had followed the Board's directive to respond to Koss's proposal as to what screws were to be installed, then he could have had input into that aspect of the work. Buckley may have forfeited that right by not responding.